In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1267

JOSEPH SCOLERI, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In a jury-waived trial in the United States District Court for the Northern District of Illinois petitioner was convicted on four counts of an indictment charging possession of goods stolen from interstate commerce, knowing them to have been stolen, in violation of 18 U.S.C. 659 (App. 1-4).[1] On April 15, 1966 he

[1] "App." refers to the printed appendix of the defendant-appellant in the court of appeals.

was given concurrent sentences of imprisonment on each of the four counts pursuant to 18 U.S.C. 4208 (a)(2) (App. 2). On appeal the conviction was affirmed (Pet. App. 1a-4a). The petition for a writ of certiorari was filed on April 13, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Evidence adduced at the pre-trial motion to suppress evidence, which the court overruled (App. 18), and at the trial may be summarized as follows:

Petitioner, a truck driver, owned a truck which he leased to his employer, the JB Cartage Company, of Chicago, Illinois (App. 10, 24, 25). On June 23, 1965, a previously reliable informant told a F.B.I. supervisor that petitioner had a load of goods stolen from an interstate shipment in a red panel truck at the JB Cartage Company, that petitioner was driving a late model orange Pontiac, and that the goods were going to be removed from the truck (App. 16-17). The supervisor notified two F.B.I. agents who undertook a surveillance (App. 6, 13).

At about 6:00 p.m. the agents observed that petitioner parked his Pontiac next to his truck, which was next to a loading dock (App. 6, 13, 18, 21). While standing on the loading dock, petitioner pulled back a tarpaulin from the rear of the truck and looked inside. After driving the truck about 30 or 40 feet to the company's office, he again looked in the back of the truck. He entered the office for a few minutes, then reappeared, and drove the truck back to its original position (App. 6-7, 13-14, 18-19, 21).

Thereupon the two agents identified themselves, warned petitioner of his rights, and inquired as to why he was on the premises. Petitioner answered that he was just "hanging around" and had returned to have his truck serviced. When the agents asked what was in the truck, petitioner said, "I will show you what is in the truck. Nothing is in the truck." When the tarpaulin was parted, petitioner expressed surprise at seeing, about two feet away, a number of shipping cartons, many of which had been opened and contained clothing and other materials (App. 7, 14-15, 19, 21-22). The cartons and their contents later proved to have been recently stolen from interstate shipments. Petitioner admitted that the cartons looked like "hot stuff" (App. 15).

At about 7:30 p.m. one of the agents asked the terminal manager of JB Cartage Company whether the merchandise belonged on the truck and he said it did not (App. 9, 16, 19-20, 22). Petitioner said, "This looks—it looks pretty bad. It looks like I am caught with the stuff. Can't I do something to help myself?" (App. 20). Petitioner at all times insisted that he did not know the discovered merchandise was in his truck. He was taken to F.B.I. headquarters at about 9:45 p.m., and was released without being charged at that time (App. 23).

Petitioner testified that he had no knowledge of the merchandise on his truck, that he did not place it there, and that he did not know who did (App. 25). He also testified, with corroborating testimony by two other witnesses, that he did not pull back the tarpaulin to look into the truck and did not drive the

truck from the dock to the office and back to the dock (App. 25, 26, 27).

Petitioner now concedes that he did have knowledge that the goods on the truck were stolen in interstate commerce (Pet. 3). He contends only that there was no evidence at all that he had possession of the goods. This contention is amply refuted by the evidence set forth *supra* (see also the opinion of the court below, Pet. App. 2a-3a). Petitioner owned the truck, exercised complete control and authority over it when he drove it to his employer's parking lot, and was effectively in possession of the stolen merchandise when discovered by the agents. *E.g.*, *United States* v. *Spatuzza*, 331 F. 2d 214, 216 (C.A. 7), certiorari denied, 379 U.S. 829; *United States* v. *Casalinuovo*, 350 F. 2d 207, 209-210 (C.A. 2); *United States* v. *Thomas*, 282 F. 2d 191, 193 (C.A. 2); *Sterling* v. *United States*, 333 F. 2d 443, 446 (C.A. 9), certiorari denied, 379 U.S. 933. The situation here is thus different from that in *United States* v. *O'Brien*, 174 F. 2d 341, 345 (C.A. 7), relied upon by petitioner. There the defendant had merely been sitting with his co-defendant in the latter's truck prior to the time when stolen butter was found on the vehicle. The question raised manifestly does not warrant further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

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